

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

RANDY RUSSELL YBARRA,

Plaintiff,

v.

WEXFORD MEDICAL, DOCTOR  
MARTHAKIS, and DIANE THEWS,

Defendants.

CAUSE NO. 3:18-CV-404-DRL-MGG

OPINION AND ORDER

Randy Russell Ybarra, a prisoner without a lawyer, filed a document titled, “Plaintiff’s Motion Requesting Amending a Judgment.” ECF 192. The motion asserts it is filed pursuant to Federal Rule of Civil Procedure 59, but Rule 59 motions “must be filed no later than 28 days after the entry of judgment.” Rule 59(e). “When a motion is filed more than 28 days after the entry of judgment, whether the movant calls it a Rule 59(e) motion or a Rule 60(b) motion, we treat it as a Rule 60(b) motion.” *Banks v. Chicago Bd. of Educ.*, 750 F.3d 663, 666 (7th Cir. 2014).

Mr. Ybarra asserts he has newly discovered evidence and the defendants committed fraud. Under Rule 60(b)(2), the court can relieve a party from a final judgment based on newly discovered evidence. Under Rule 60(b)(3), the court can relieve a party from a final judgment based on fraud by an opposing party. However, a motion under Rule 60(b)(2) and (3) must be made “no more than a year after the entry of the judgment[.]” Rule 60(c)(1). Judgment in this case was entered May 25, 2021. ECF 188. This

Rule 60(b) motion was not signed until June 30, 2022. ECF 192 at 14. Because it was not filed within one year of the entry of judgment, relief cannot be granted under Rule 60(b)(2) or (3). *See Matter of Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 878 F.2d 182, 184 (7th Cir. 1989).

Mr. Ybarra does not ask to enlarge the one-year deadline; but, even if he had, Rule 60(b)(2) prohibits the court from enlarging it. Nor does he ask for relief pursuant to Rule 60(b)(6), which permits relief from a judgment for “any other reason that justified relief” and is not subject to the one year deadline; but, even if he had, “clause (6) and clauses (1) through (5) are mutually exclusive.” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 n.11 (1988). Because Mr. Ybarra’s request is squarely based on newly discovered evidence and fraud, the court cannot grant relief under Rule 60(b)(6).

For these reasons, the Rule 60(b) motion (ECF 192) is DENIED.

SO ORDERED.

August 22, 2022

s/ Damon R. Leichty  
Judge, United States District Court